



STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS

Draft

Date Amended:	08/22/01	Bill No:	SB 1185
Tax:	Business Taxes	Author:	Senate Revenue and Taxation Committee
Board Position:	Support – Board-sponsored	Related Bills:	AB 1126 (AR&T)

***This analysis will not address the bill's provisions concerning the Personal Income and Bank and Corporations Tax Laws as they do not impact the Board.***

### BILL SUMMARY

Among other things, this bill contains Board of Equalization-sponsored provisions for the sales and use tax and the special taxes and fees programs, which would do the following:

- Change the hazardous waste generators' refund application dates. (§25205.5)
- Allow reimbursements to taxpayers for third party check charges. (§§7096, 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1)
- Clarify claim for refund time period. (§§32402, 45652, 46502, 50140, and 55222)

### ANALYSIS

**Change the refund application date until after the Department of Toxic Substances Control has determined whether or not surplus funds are available.**

*Health and Safety Code Section 25205.5*

#### Current Law

Under existing law, Section 25205.5 of the Health and Safety Code imposes a fee on a generator for each generator site for each calendar year unless the generator has paid a facility fee or received a credit per Section 25205.2(i) for each specific site for the calendar year for which the fee is due. The fee is divided into different tiers based on the tonnage of waste generated, with a significant incremental increase in the fee as a generator produces more waste and moves from one tier to the next.

Section 25205.5 also provides that a generator of hazardous waste is eligible for a refund of all or part of the state generator fee paid if all of the following apply:

- The generator paid an inspection fee to a Certified Unified Program Agency, which imposed the fee as part of a single fee system and fee accountability program in compliance with Section 25404.5;

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- The generator received a credit for the generator fee or generator surcharge, as provided in Section 43152.7 or 43152.11, respectively, for fees paid to a local hazardous waste management program pursuant to a Memorandum of Understanding filed with the Department of Toxic Substances Control (DTSC) for waste generated in 1996; and,
- The DTSC certifies that funds are available to pay all or part of the refund.

Section 25205.9 of the Health and Safety Code requires the DTSC, on or before June 30 of each year, to determine if there are surplus funds in the Hazardous Waste Control Account and allocate the surplus, upon appropriation by the Legislature, to pay the refunds provided by Sections 25205.5(h) and 25205.5(i).

To be eligible for a refund, a generator must submit an application for refund to the Board of Equalization by March 31 of the fiscal year during which the generator paid the generator fee. Accordingly, a generator must submit an application to the Board for a possible refund of state generator fees paid approximately 3 months before the DTSC determines whether or not there are surplus funds available to pay the refunds. An application received after March 31 is void, not processed by the Board, and returned to the applicant. In 1999 and 2000, the Board has denied all claims for refunds because the DTSC did not certify that there were surplus funds available for refunds.

### Comment

By postponing the filing date until after the DTSC determines whether surplus funds are available to pay the refunds, this amendment would allow a generator to ascertain, prior to submitting a refund application, whether refunds will be issued. This amendment is intended to save fee payers and the Board the expense of preparing and processing claims for those fiscal years when surplus funds are determined not to be available. This change would eliminate a time consuming and unnecessary refund claim process for both fee payers and the Board in those years when funds will not be available for refunds.

### **Allow reimbursement of any reasonable third party check charges imposed on a taxpayer due to an erroneous levy.**

*Revenue and Taxation Code Sections 7096, 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1*

### Current Law

Under current law, Revenue and Taxation Code Section 7096 provides that a taxpayer may file a claim with the Board for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold issued by the Board. Bank charges include a financial institution's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution. However, the current law contains no provisions for reimbursement of other check charge fees imposed on the taxpayer.

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Taxpayers are routinely reimbursed for bank charges related to erroneous levies, but not for related third party charges, such as bounced check charges imposed by daycare centers, retailers, or utility companies. While the amounts involved are relatively minor (approximately \$40 each for the 10 or so cases each year), the Board has disallowed third party reimbursements because those charges are not covered by Section 7096.

### **Comment**

These amendments would add reasonable third party check charges to the amount that the Board is authorized to reimburse a taxpayer from charges they incur due to an erroneous levy or notice to withhold by the Board. It is fair and equitable to reimburse taxpayers for third party charges and this proposed change is well within the intent of the original legislation that authorized the Board to reimburse taxpayers for Board errors.

### **Clarify the time period in which a claim for refund may be filed.**

*Revenue and Taxation Code Sections 32402,  
45652, 46502, 50140, and 55222*

### **Current Law**

Under existing law, Section 6902 of the Revenue and Taxation Code provides that the Board shall not approve a refund of the sales and use tax: (1) within three years after the due date of the payment for the period for which the overpayment was made; or, (2) with respect to determined amounts after six months from the date the determinations become final; or (3) after six months from the date of overpayment, whichever period expires later, unless a claim for refund is filed with the Board within that period. Several other tax and fee programs administered by the Board contain identical provisions.

However, Sections 45652 (Integrated Waste Management Fee Law), 46502 (Oil Spill Response, Prevention and Administration Fee Law), 50140 (Underground Storage Tank Fee Law), and 55222 (Fee Collection Procedures Law) are similar, except that the phrase “after six months from the date the determinations become final” is replaced by “within six months after the determinations have become final”. There appears to be no apparent reason for this difference, and the language is difficult to interpret and apply. For example, this may be interpreted to mean that the taxpayer may file a claim for refund at any time after six months after the determination becomes final, in effect eliminating the statute of limitations.

Under current law, Section 32402 (Alcoholic Beverage Tax Law) also includes the phrase “within six months after the determinations become final” rather than “after six months from the date the determinations become final”. In addition, Section 32402 does not contain the third option, the filing of a claim for refund after six months from the date of overpayment, thus imposing a more restrictive statute of limitations on the filing of claims for refund in this tax program.

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**Comment**

These amendments would provide claim for refund language consistent with the Sales and Use Tax Law and the other tax and fee laws administered by the Board. These amendments would also make the Alcoholic Beverage Tax Law consistent with the claim for refund provisions of the Sales and Use Tax Law and the other tax and fee laws administered by the Board.

**COST ESTIMATE**

Any Board costs associated with this bill would be absorbable.

**REVENUE ESTIMATE**

The amendments that would allow reimbursement of third-party check charges would result in an annual revenue loss of less than \$1,000.

The remainder of the provisions would not effect the state's revenues.

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